FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 2397 OF 2006

Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders.	: : : :	Court's or Judge's Orders .

Mr. S.S. Patwardhan for petitioner

Ms. M.H. Mhatre, APP

CORAM: SMT. RANJANA DESAI, J.
DATED:-11/12/2006

P.C.:-

In this petition, the petitioner has challenged order dated 29/10/03 passed by the Judicial Magistrate, First Class, Islampur issuing process against the petitioner for offences under Sections 421, 423 & 424 r/w 34 of the Indian Penal Code ("I.P.C." for short) and order dated 7/9/06 passed by the Ist Adhoc Additional Sessions Judge, Islampur, whereby the revision application filed against the said order was dismissed.

It appears that the petitioner's husband has stood guarantor to

original accused 1 P. R. Magdum. The loan amount was to the tune of Rs.1,60,000/-. The dispute filed before the co-operative court was decreed on 17/9/99 and the accused were jointly and severally ordered to pay a sum of Rs.1,96,752/-with future interest @ 20% on Rs.1,60,00/- from 29/5/1998 till realization of entire amount to disputant.

It appears that thereafter on 12/9/02 the husband of the petitioner, who was original accused 2 gifted part of his property to the petitioner. Part of it was allotted to her by partition on 7/12/02. It is on the basis of these events that the complaint came to be filed against the petitioner alleging aforementioned offences.

I have heard Mr. Patwardhan, learned counsel for the petitioner. Mr. Patwardhan stated that the petitioner could not be charged for offence under Sections 421, 423 and 424 of the I.P.C. because the

property which was gifted or allotted to the petitioner was not the property on which the charge was created. He submitted that the order issuing process must, therefore, be quashed.

I am not impressed by this submission. Prima facie it appears that after the decree was passed on 17/9/99 gifting the property or allotting it by way of partition to the petitioner who is the wife of original accused No. 2, who stood guarantor to original accused 1 appears to be not free from doubt. The submission advanced on behalf of the petitioner can always be examined after the evidence is adduced.

In my opinion, the learned Sessions Judge is right when he observes that there is prima facie material against the petitioner. Hence there is no substance in the petition. Petition is rejected.

JUDGE.